Supreme Court, U. S.
FILED
APR 26 1977
MICHAEL RODAK, JR., CLERK

No. 76-1058

In the

Supreme Court of the United States

OCTOBER TERM, 1976

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY MEMORANDUM FOR THE PETITIONER

SHARON L. KING
One First National Plaza
Suite 4200
Chicago, Illinois 60603
Counsel for Petitioner

Of Counsel:
ROBERT E. CRONIN
GERALD D. MINDELL
THOMAS G. RYAN
PHILIP P. STEPTOE
ISHAM, LINCOLN & BEALE
One First National Plaza
Suite 4200
Chicago, Illinois 60603
(312) 786-7500

The Scheffer Press, Inc.—(312) 263-6850

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

No. 76-1058

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

REPLY MEMORANDUM FOR THE PETITIONER

Central Illinois Public Service Company presents two questions in its petition for a writ of certiorari. The United States, through the Solicitor General, does not oppose the granting of certiorari with respect to the first question because of the conflict between circuits and the importance of the issue (Memo. 3).

The Solicitor General relegates his contention that there is no basis for review of petitioner's second question[1] to a footnote (Memo. 4 at n.3). The Solicitor General asserts

---

[1] *I.e.*, whether withholding tax obligations may be retroactively imposed on an employer as a matter of law . . . as to payments which subsequently may be deemed to be wages.

that "petitioner had no reason to believe that the lunch payments[2] were not subject to withholding," stating that, "none of the cases cited by petitioner (Pet. 7) involves the question whether meal payments are 'wages' ". This statement is misleading; in fact, petitioner's cases demonstrate that in 1963 noon meal reimbursements were not even considered "income," much less "wages" subject to withholding.

If withholding employers may be retroactively subjected to liability in all open years for failing to predict future judicial interpretations of the tax laws, the consequences will far outweigh the $10,350,000 which the Solicitor General states is at stake in pending cases. Because the issue of retroactivity is so interwoven with the first issue, certiorari should be granted with respect to both questions.

Respectfully submitted,

SHARON L. KING
ROBERT E. CRONIN
GERALD D. MINDELL
THOMAS G. RYAN
PHILIP P. STEPTOE
ISHAM, LINCOLN & BEALE
One First National Plaza
Suite 4200
Chicago, Illinois 60603
(312) 786-7500
Counsel for Petitioner

---

[2] [Petitioner's footnote] The Government's memorandum contains an argumentative characterization of the facts which is misleading in light of the district court's findings.